

**Incarceration Prevention Reduction Task Force
Justice & Legal System Committee Meeting**

July 11, 2017

Whatcom County Courthouse Conference Room 514, 311 Grand Avenue, Bellingham WA
11:30 a.m. - 1:30 p.m.

AGENDA

Topic	Requested Action	Presenter	Packet Page(s)
1. Call to Order <ul style="list-style-type: none"> • May 9, 2017 and June 13 Meeting Summary Review 	Review	N/A	1 - 10
2. VERA Institute preliminary data analysis and recommendations	Presentation	Liz Swavola Kristi Riley	11 - 19
3. Drug Court	Discussion	Judge Montoya-Lewis Chris Furman Dave McEachran	20
4. Domestic Violence & Sexual Assault Service (DVSAS) and domestic violence treatment	Presentation	Karen Burke	N/A
5. Other Business			
6. Public Comment			
7. Adjourn The next meeting is 11:30 - 1:30 on August 8, 2017 at the Courthouse Fifth Floor Conference Room 514, 311 Grand Avenue, Bellingham.			

Upcoming Meetings:

- **VERA Institute consultant presentation to County Council at Special Committee of the Whole meeting: 1:30 p.m. on July 11, 2017 in the County Council Chambers, 311 Grand Avenue, Bellingham**
- *(Tentative)* Triage Facility Committee: 9:30-10:45 on July 20, 2017 at the Health Department Creekside Conference Room, 509 Girard Street, Bellingham.
- Behavioral Health Committee: 11-noon on July 20, 2017 at the Health Department Creekside Conference Room, 509 Girard Street, Bellingham.
- Full Task Force: 9-11 a.m. on August 28, 2017 at the Courthouse Fifth Floor Conference Rooms 513/514, 311 Grand Avenue, Bellingham.

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DRAFT Meeting Summary for May 9, 2017

1. Call To Order

Committee Chair Stephen Gockley called the meeting to order at 11:30 a.m. in the Whatcom County Courthouse Conference Room 514, 311 Grand Avenue, Bellingham.

Members Present: Angela Anderson, Jill Bernstein, Bill Elfo, Stephen Gockley, Fred Heydrich, Moonwater, Darlene Peterson

Members Absent: John Billester, Dave McEachran, Irene Morgan

Also Present: Joy Gilfilen (proxy for Irene Morgan), Nick Lewis, Kathy Walker (proxy for Dave McEachran)

Review March 4 and April 11, 2017 Meeting Summaries

There were no changes.

2. Pretrial Risk Assessment Instrument

Gockley submitted and referred to handout from Council Legislative Analyst Forrest Longman (*on file*) on the cost of locally validating a risk assessment instrument.

Matt Elich, Whatcom County District Court Judge, stated the pretrial release assessment instrument (PRAI) will primarily be used by Superior Court. District Court already engages in pretrial release. The District Court judges will consider and will not obstruct the use of a PRAI.

The committee members discussed:

- Whether validation costs are prohibitively expensive.
- The variety of different charges between Superior Court felonies and municipal and District Court misdemeanors.
- Review of potential validators by the VERA Institute consultants.
- Whether they need a specialist to design and validate the County's PRAI instead of designing their own or using an off-the-shelf tool.
- Prioritizing all recommendations that go to the Council.
- The concern about inconsistent orders between Superior Court and District Court.
- In Yakima, both Superior Court and District Court use the PRAI.
- In Spokane, all courts will be using the PRAI by June.

3. Drug Court

Chris Furman, Whatcom County Drug Court, described her background and the Drug Court process.

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Raquel Montoya-Lewis, Whatcom County Superior Court Judge, described her background and the County's Drug Court program.

Montoya-Lewis, Furman, and the Committee members discussed the following:

- At this time, the program has an excellent base, and they do well with what they have.
- There are issues with funding, time, and lack of available services. With more funding, they can serve more people.
- Most participants are released from jail and go directly into inpatient treatment.
- Many participants are released from treatment too soon, and there is a gap in the definition of successful treatment between how the Court defines it and how the treatment provider defines it.
- 30 days is the minimum necessary treatment length.
- The Court has no authority to make a treatment provider hold someone longer than the provider deems necessary according to their criteria for inpatient treatment.
- Catholic Community Services is really the only provider for outpatient services, but they are not providing a skills curriculum for drug court participants.
- It's a best practice for the judge to know where the participant is at in the learning process, but that can't happen without a curriculum.
- Other programs with evidence-based practices are available in the community, such as the SeaMar Living in Balance program, but it's only available to the insured and private payers.
- Possible solutions for drug court services include:
 - The County to hire another case manager and develop a certified assessment center and curriculum-based program specifically for Drug Court participants. The North Sound Behavioral Health Organization would have to certify a program.
 - Work with Catholic Community Services to develop a curriculum-based program that is validated to best practices for Drug Court participants.
 - County to contract with SeaMar to provide a certified, specialized branch program for Drug Court participants
 - Contract with a local practitioner to develop and implement a program for drug court participants.
- Assessments are done quicker for people who remain in custody. It can take a month or longer to get an assessment for anyone out of custody. Certifying Drug Court personal would allow the process to work better and get people into treatment quicker. It would cost \$1,000 and a documented continuum of care to become a certified assessment center, plus there must be assessment staff to build a great program.
- Out-patient services are paid by Medicaid to a provider that has been certified and is contracted by the North Sound Behavioral Health Organization (BHO), which only contracts with Catholic Community Services (CCS) and SeaMar at this time.

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- Have a discussion with North Sound BHO about auditing their contracts and why they are funding CCS, which isn't following best practices.
- There is a need for clean and sober housing, especially for women and people on suboxone.
- Drug Court violation sanctions are limited, and would benefit from other options, such as electronic home monitoring, that a pretrial unit could provide.
- The Drug Court needs small incentives and rewards for participants who do well, which is a drug court best practice. A small budget amount of \$1,000 per year for incentives would go a long way. A fund request is set up for the Whatcom County Drug Court at the Whatcom Community Foundation website:
https://wcf.fcsuite.com/erp/donate/create?setc=1&funit_id=1387&event_date_id=&grant_id=
- Additional FTEs:
 - A .5 FTE to allow Ms. Furman to develop community relationships and support for the program and its participants, at a cost of approximately \$75,000 to \$80,000. If certified, the position could do urinalysis in-house, which would save the County \$1,500-\$2,000 per month.
 - One case manager FTE to allow in-house treatment
 - Ideally, one to three additional FTEs total would allow the program to grow and do better.
- There are 40 participants now, and could be increased to 80 with an additional three case managers and a urinalysis technician.
- The process for deciding who is and who isn't qualified for Drug Court is very unclear. The national best practice for that process includes risk assessment. Those who do best are high risk with high needs.
- The Lummi Nation is focusing its money on the high risk, swift and certain, post-conviction drug court. Their capacity is 20 participants. Their jail budget is going down because of their investment in wraparound services.
- Judge Montoya-Lewis and Drug Court staff need training in best practices according to the National Association of Drug Court Professionals (NADCP).
- The County's Drug Court program would be qualified to apply for federal drug court grants if it followed NADCP best practices.
- Use a VISTA volunteer through the Opportunity Council to write grants.
- In terms of the 2012 assessment recommendations, Judge Montoya-Lewis knows they need to increase capacity, but can't do that without additional case managers and solve other issues as discussed.

Walker described the Prosecutor's process for determining eligibility for drug court and how drug court was originally created:

- The defense attorneys request that their client be considered for drug court.
- The prosecuting attorneys consider the present offense, the most current offense plus their history, plus their FTA history.

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- When the initial drug court program was set up 15 years ago, everybody met and went to training sessions all over the country
- Decisions on eligibility includes prosecutorial discretion.
- The existing program hasn't been reviewed since it was created, and it may be time for a review.
- National best practices may or may not work in the local environment.
- There is no waiting list to get into the program, and eligible participants aren't turned away due to lack of program capacity.

(Note: The Committee continued discussion of Drug Court at its meeting on June 13, 2017.)

4. Developing a Pretrial Risk Assessment Instrument: initial work group report

Heydrich stated there is no new information. He's come to the conclusion that it's best to contract with a specialist to develop a locally-validated assessment tool.

5. Pretrial Supervision

Heydrich reported on his trip to Spokane to learn about their new pretrial assessment and supervision program.

- The jail is run by the County Commissioners, not the Sheriff.
- The program is too new to have statistics on results.
- Everyone except the Sheriff was optimistic about the program.
- They used the Washington State risk assessment in the past, and were not happy with it because it wasn't designed for pretrial defendants and doesn't address failures to appear.
- Statistics on pretrial jail population are unclear, and the estimates ranged from 38 to 70 percent.
- At this time, it's only for felonies, but will expand to District Court and Municipal Court by June.
- They have a significant federal population.
- The County jail has a mental health unit.
- The pretrial supervision unit:
 - Interviews inmates daily
 - The staff of 15, including 11 pretrial supervision officers, answers to the County Commissioners.
 - There is only one level of pretrial supervision: there must be no new violations, check-in by phone is required, and they must attend court and maintain their residences.
- Staff training was on-the-job.
- Spokane used Dr. Zachery Hamilton from Washington State University to validate the program.

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- The risk assessment was funded with a MacArthur grant.
- He has ideas to make the first appearance calendar run more efficiently.
- Complete the risk assessment before the first appearance.
- The Lummi Nation programs uses the LSIR for risk assessment, uses a 24/7 sobriety program for pretrial, and uses a hotline that people must call into every day.

6. Next Steps: Ideas & Further Information

This item was not discussed.

7. Other Business

There was no other business.

8. Public Comment

Amy Malone, Restorative Community Coalition, stated she hopes the Task Force follows through on all the ideas presented today and looks at the proposals from the Restorative Community Coalition to partner with other agencies.

9. Adjourn

The meeting adjourned at 11:10 a.m.

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1. Call To Order

Committee Chair Stephen Gockley called the meeting to order at 11:33 a.m. in the Whatcom County Courthouse Conference Room 514, 311 Grand Avenue, Bellingham.

Members Present: Angela Anderson, Jill Bernstein, John Billester, Bill Elfo, Stephen Gockley, Fred Heydrich, Dave McEachran, Moonwater, Irene Morgan, Darlene Peterson

Also Present: Matthew Elich, Deborra Garrett (proxy for Fred Heydrich), Joy Gilfilen (proxy for Irene Morgan), Bruce Van Glubt

Members Absent: None

Review May 9, 2017 Meeting Summary
- and -

2. Drug Court

(Note: The Committee discussed the meeting summary and Agenda Item 2, Drug Court, concurrently.)

McEachran stated he had concerns about comments made at the May 9 meeting regarding drug court:

- The Whatcom County Drug Court exactly follows best practices as described by the 10 key components in *Drug Courts: Defining Key Components*, by the Bureau of Justice Assistance, which is what everyone follows.
- All drug court programs across the country vary based upon the targets, the people you're looking at, location, and how much money you have to fund the program.
- The Whatcom County Drug Court is pre-conviction.
- Whatcom County did not receive any drug court grants this year because Superior Court did not apply for any.
- There are not enough treatment providers and not enough beds.
- There is no waiting list for drug court, so there's no reason to increase capacity to 80.
- His process for deciding who goes into drug court is not unclear.
- They do not include violent people, nor do they include drug dealers.
- The responsibility of the Prosecuting Attorney is to protect the public safety by ensuring that each candidate is appropriate for the program and complies with all drug court requirements.
- They have criteria for making decisions regarding participants and continued enrollment barring additional criminal behavior.
- He reviews all the felonies every morning. If he determines that someone would be available for drug court, he will identify them, contact the defense, and tell them they're a candidate, but it's incumbent upon them to ask.
- They're trying to increase the turnaround time.
- Regarding the statement that those who do best are high risk with high needs, if the high risk means high violence, that's something they never approve.

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- When prescreening, he looks at the criminal histories, review past cases, and see if there's a real indication of violence.

Kathy Walker also spoke about factors of the drug court program:

- There are two funding streams. One is through the National Association of Drug Court Professionals, and one is through the National Institute of Justice (NIJ). They rely on the 10 best components.
- The 10 components are applied to 1,800 drug courts in this country.
- The 10 components have been adopted by both the drug court professional group and the criminal justice group.
- According to the research, they've been applied across the board to analyze the performance of drug court.
- It lays out a flexible structure for designing drug court programs based on community structure, community focus, drug interventions, and other things.
- There are levels of review. One is for the prosecution's side. Once approved by the Prosecutor's Office, they're reviewed by the therapeutic court principals to determine whether or not they're eligible for the program and what kind of addiction problem they have.
- The May 9 meeting summary does not accurately reflect the discussion or include the comments she made at the meeting.

Task Force members discussed:

- The purpose of the meeting summaries reflecting statements made at a meeting, regardless of whether or not members agree with the statements.
- The nature of statements from Judge Montoya-Lewis and Ms. Furman at the May meeting.
- Continuing the discussion of drug court at the next meeting, with all parties present.
- Whether there are different sets of standards and best practices.
- The Task Force's enabling ordinance, which calls for them to identify evidence-based practices.
- The lack of quality treatment providers and services in the community.
- Whether the County is losing out on funding options if it doesn't meet the current best practices.
- Continuing to work on establishing what best practices are and deciding whether or not the County's program follows them.
- How someone waiting for drug court can find out whether or not their application is delayed.
- The drug court approval process.

The Committee members agreed that the Clerk will review the May 9 meeting audio and summary and work with the Prosecutor's Office to refine the summary.

McEachran moved that this committee set forth the agenda for the next meeting at or near the conclusion of this meeting today.

The motion was seconded.

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The Task Force members discussed allowing the Chair flexibility to change the agenda when necessary.

McEachran stated that there is flexibility to add items later on. They can star additional items, so it would be known.

The motion failed by the following vote:

Ayes: Anderson, Billester, Elfo, Gockley, and McEachran

Nays: Bernstein, Gilfilen (as proxy for Irene Morgan), Heydrich, and Peterson

Abstains: Moonwater

(Clerk's Note: With a total of 10 members on the committee, a motion requires six votes to pass. Although the Clerk announced the motion passed, it did not.)

3. Pretrial Risk Assessment Tool

There is no new information on the County's effort to create a pretrial risk assessment tool.

Heydrich stated he recommends that they hire someone to assess the local information and help them develop a risk assessment tool that works for this community.

Bernstein stated the VERA Institute consultants are working on data analysis and will be onsite in July to report.

Task Force members discussed the timeline for receiving the data report, Spokane pretrial services, and costs associated with developing a pretrial risk assessment tool. The pretrial services for Spokane are managed better under the county commissioners executive branch. However, they only do monitoring, not supervising with discretionary authority, because it does not share judicial immunity.

4. Pretrial Supervision Unit

Bruce Van Glubt, Whatcom County District Court Administrator, submitted and referenced a handout (*on file*) and reported on pretrial risk tools and risk tools that could be used by district court professionals, not judges, prosecutors, or defense attorneys, in supervising defendants. He described the history of the District Court Probation risk assessment and what he's looking for in a new risk assessment tool, which includes:

- A more currently validated tool
- Ongoing institutional support
- Whether staff can be trained to use the tool with a reasonable amount of resources
- Whether the tool is user-friendly for staff to complete for each defendant within a reasonable amount of time
- Whether it is affordable

He described the variety of ways jurisdictions develop a validated tool. In the end, it comes down to personal preference of the decision-makers for an off-the-shelf versus customized tool. The

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decision-makers won't use or allow to be used any tools that include the deal-breakers that they personally decide are important. All the validated tools are pretty good tools, but it comes down to the human factor to make the decision. However, the choice of which risk assessment tool to use can change. For example, the Washington State Department of Corrections is moving away from the adult static risk assessment (ASRA) and will begin using the STRONG-R.

Matthew Elich, District Court Judge, asked about training, cost, and validation of the Ohio Risk Assessment System (ORAS). According to Van Glubt:

- The Ohio Risk Assessment System is free to use, but training is required to use it
- The State Department of Social and Health Services pays for training on the Ohio Risk Assessment System
- He attended the two-day training and will attend a five-day training in August, so he can train other users
- The Ohio Risk Assessment System includes several tools
- Each tool can be purchased and used separately
- Whatcom County District Court may decide to use the Ohio Risk Assessment System
- The cost to locally validate the Ohio Risk Assessment System tools will be \$30,000 to \$100,000, depending on how many of the tools in the system they use

Van Glubt and the Committee members continued to discuss the range of validation costs, depending on which tool they decide to use; felony versus misdemeanor risk assessment tools; using the same tool across all the courts in the county; video-training on the ORAS (<http://youtu.be/5pn2LDun40I>) making sure any tool they decide to use isn't racially-biased; and finding out from developers of risk assessment tools what is the impact on recidivism in other jurisdictions since those jurisdictions started using a risk assessment tool.

5. Next Steps: Ideas & Further Information

Anderson will provide information on a training video for the ORAS.

Committee members should email outstanding questions they have regarding pretrial risk assessment to the Clerk and Mr. Van Glubt.

The committee decided that the following items will be on the next committee agenda:

- Pretrial risk assessment, including the range of costs
- Drug court discussion with Mr. McEachran, Judge Montoya-Lewis, and Chris Furman
- VEA Institute of Justice (tentative)
- Improved domestic violence treatment with Karen Burke (tentative)

Task Force members discussed the possibility of adjusting its regular meeting schedule so it does not conflict with the County Council meeting schedule.

6. Other Business

There was no other business.

7. Public Comment

There was no public comment.

8. Adjourn

The meeting adjourned at 1:29 p.m.

DRAFT

Date: July 7, 2017

To: Whatcom County Incarceration Prevention and Reduction Task Force

Subject: Preliminary data findings

From: Vera Institute of Justice

This memo provides a preliminary summary of the Vera Institute of Justice's (Vera) key findings regarding factors contributing to the growth of Whatcom County's jail population. The findings draw from Vera's investigation of policies and practices in Whatcom's local justice system, including individual and group interviews with county stakeholders, a detailed system mapping exercise, and analysis of administrative data from the Whatcom County Sheriff's Office, the Bellingham Police Department, and the Washington State Administrative Office of the Courts.

This interim memo lays the foundation for the next phase of Vera's work with the Incarceration Prevention and Reduction Task Force (Task Force): the development of recommendations to reduce the jail population safely and make justice system processes fairer and more effective. Vera staff will meet with the Task Force in the coming months to facilitate a more in-depth discussion about specific strategies to address challenges surfaced in our investigation. This discussion will inform the final report and recommendations Vera delivers to the Task Force.

Methodology

The size of the jail population is determined by two key factors: who goes into the jail and how long they spend there. To understand these factors, we review two different types of data: admissions to jail and Average Daily Population (ADP). Admissions data provide information about everyone booked into jail, and how long they stay. The ADP provides a snapshot of who is detained in jail at any given time and how long, on average, they have spent there.

Vera's analysis examined admissions to and releases from the Whatcom County jail for calendar year 2016. Where possible, the analysis excludes admissions involving holds from other jurisdictions, including the Washington State Department of Corrections (DOC) and the federal government, because those holds tend to take longer to resolve, which can complicate timely release from jail, and therefore skew trends upward, particularly for length of stay. Excluding holds also has the benefit of focusing attention on cases that reflect policies and practices within the exclusive jurisdiction and control of local system actors and are not dependent on actors in other jurisdictions. Overall, holds accounted for 17 percent of the Whatcom County jail's ADP.

Key Findings

Admissions and ADP

Excluding admissions involving holds from other jurisdictions, 38 percent of admissions had a felony as the most serious charge, while 62 percent had lesser charges:

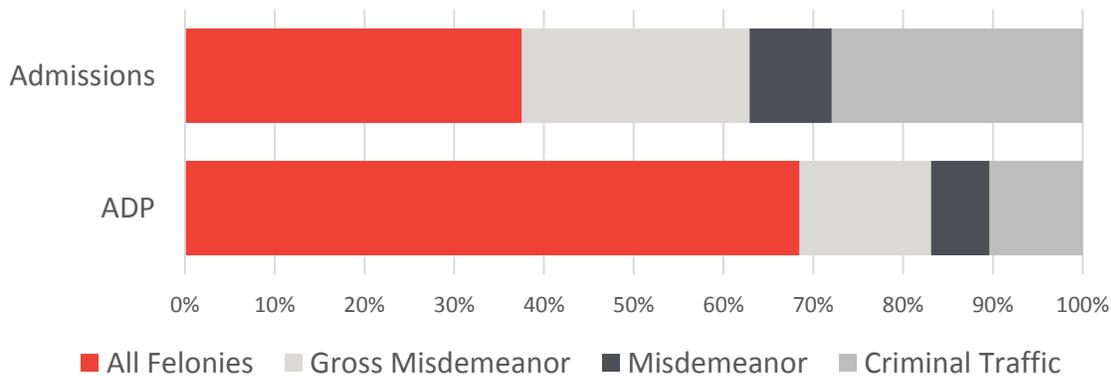
- 25 percent had no charge more serious than a gross misdemeanor;
- Nine percent had no charge more serious than a misdemeanor; and
- 28 percent had no charge more serious than a criminal traffic offense.

Figure 1: Admissions & ADP without holds by offense class

	Admissions		Average daily population	
	#	%	#	%
All felonies	1,966	38%	187	68%
Gross misdemeanor	1,329	25%	40	15%
Misdemeanor	479	9%	18	7%
Criminal traffic	1,464	28%	28	10%

Figures 1 and 2 show that although people admitted with felony charges represent a smaller proportion of admissions than people with lesser charges, they make up a substantially larger proportion of the jail population due to generally longer lengths of stay. On any given day, excluding holds, those in jail on felony charges make up 68 percent of the population while those with lesser charges are 32 percent of the population.

Figure 2: Admissions & ADP without holds by offense class



Among admissions, the most common top charges across offense categories were:

- Felony: controlled substance violation, second degree assault, and second degree burglary;
- Gross misdemeanor: fourth degree assault, third degree theft (less than \$750), and failure to appear on third degree theft charges;

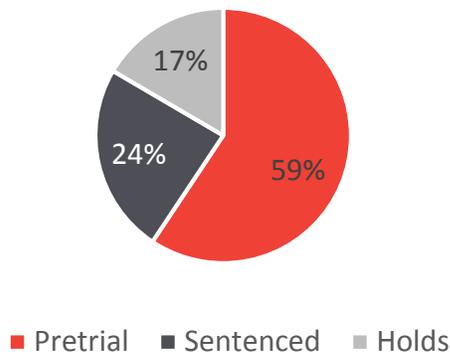
- Misdemeanor: probation violation, shoplifting less than \$50, and second degree criminal trespass; and
- Criminal traffic: driving while under the influence, driving with a suspended license in the third degree, and reckless driving.

Pretrial and Sentenced

On any given day, 59 percent of people in custody are pretrial, which means they are legally innocent and awaiting resolution of their cases, compared to 24 percent of the jail population that is sentenced (see Figure 3).¹ Of those held pretrial:

- 78 percent had a felony as the most serious charge;
- 12 percent had a gross misdemeanor;
- Four percent had a misdemeanor; and
- Six percent had a criminal traffic offense.

Figure 3: ADP by legal status



Demographics

Men comprise 74 percent of admissions and 82 percent of the ADP, while women make up a smaller portion of each—26 and 18 percent respectively. While these patterns are consistent with national trends, the proportion of women represented in both admissions and ADP is higher than national averages—21 and 14 percent, respectively.

The average age of someone booked into jail is 34, and the average age among the ADP is also 34.

¹ ‘Pretrial’ refers to individuals whose most serious cases—or all cases—have not yet reached resolution and who do not have a hold from a jurisdiction outside Whatcom County. They are detained because they cannot afford financial bail. ‘Sentenced’ refers to individuals whose most serious cases—or all cases—have reached disposition and do not have a hold. We infer that the sentence on the most serious case is the primary reason for their detention, not an unresolved lesser charge. Holds, which we again exclude here, account for the other 17 percent of ADP.

While white people make up 76 percent of those booked into jail, black people and Native Americans are over-represented in jail admissions as compared to their representation in the Whatcom County population.² For example:

- Black men were admitted to jail at 8 times the rate of white men;
- Black women were admitted to jail at 5 times the rate of white women;
- Native American men were admitted to jail at 5 times the rate of white men; and
- Native American women were admitted into the jail at 7 times the rate of white women.

Similarly, looking across all races, people identified as Hispanic were admitted to jail at about 3.5 times the rate of non-Hispanics. See Figure 4 for jail admission rates—measured as admissions per 100,000 county residents—and disparities measured against the baseline rates for whites and non-Hispanics.

Figure 4: Jail admission rates and disparities by race and ethnicity

	Men		Women	
	Jail Rate	Disparity	Jail Rate	Disparity
White	4,012	1.0	1,386	1.0
Black	32,566	8.1	7,456	5.4
Native American	19,711	4.9	9,335	6.7
Non-Hispanic	3,636	1.0	1,301	1.0
Hispanic	13,460	3.7	4,313	3.3

Length of Stay

The average length of stay (ALOS) for those booked into jail in 2016 was:

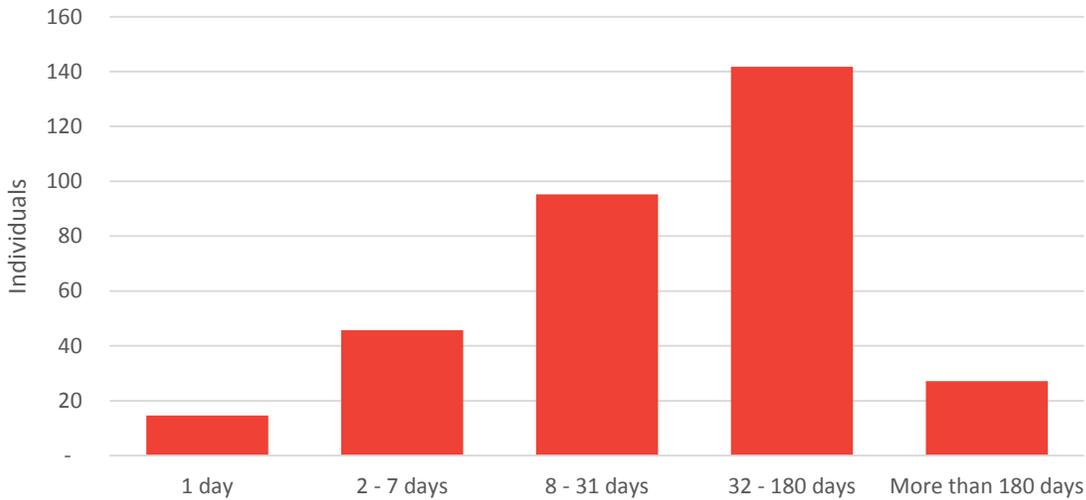
- 35 days for felonies;
- 11 days for gross misdemeanors;
- 14 days for misdemeanors;
- Seven days for criminal traffic; and
- 20 days for holds from other jurisdictions.

Of the total jail admissions, 41 percent stayed in jail one day or less, which means the County likely expended a significant amount of resources on them, including jail and medical staff time, only to release them shortly thereafter. Only nine percent of admissions resulted in people staying in jail for two months or more, but on any given day, this population occupies 63 percent of beds in the jail. While limiting admissions for those who stay a short time is a central part of jail reduction, it is the “long stayers” who

² Hispanic ethnicity is collected as a subset of race and, therefore, cannot be broken down here.

cause the jail to be so full (see Figure 5). For this reason, it is critical to consider reduction strategies to address this more challenging population and not focus solely on those with more minor charges.

Figure 5: Length of stay so far for the ADP



Arrest

- Arrests that result in jail admissions frequently involve more than one law enforcement agency. When a single arresting agency was involved, the Bellingham Police Department (29 percent), the Whatcom County Sheriff’s Office (25 percent), the Washington State Patrol (15 percent), and the Department of Corrections (10 percent) accounted for nearly 80 percent of jail admissions.
- Though law enforcement officers have statutory authority to issue citations for misdemeanors and gross misdemeanors, with a small category of exceptions, they underutilize citations as a response to lower-level offenses. As mentioned above, more than 60 percent of jail admissions involve gross misdemeanors, misdemeanors, and criminal traffic offenses as the most serious charges.
- A large percentage of jail admissions involve warrants. Fifty percent of felony bookings had outstanding warrants—either for the current felony or for other charges in addition to the current felony. Fifty-three percent of gross misdemeanor bookings had outstanding warrants, as did 75 percent of misdemeanors, and 40 percent of criminal traffic offenses. The high rate of outstanding warrants is likely impeding officers’ ability to use citations to the fullest extent possible.
- The county lacks law enforcement-led diversion opportunities that are responsive to the offenses that are driving jail admissions.

Assignment of Counsel

- Weekend probable cause hearings occur without defendants or defense counsel present, which likely limits pretrial release and delays assignment of counsel. Some defendants who are released as a result of this hearing do not apply for or hire counsel before arraignment, creating further case processing delays and failure to appear (FTA).
- In the small cities, public defenders are not available until after arraignment, despite the courts' practice of accepting guilty pleas from defendants at this hearing. Defendants who are released after arraignment and wish to apply for public defense must go to District Court Probation to apply. When they fail to do so, the case is typically continued for two weeks to a month.

Bail and Pretrial Release Decisions

- In Whatcom County, pretrial release is often determined by ability to pay financial bail. Vera's analysis found that of people booked into jail who did not have holds:
 - 21 percent were released on personal recognizance (PR);
 - 55 percent were assessed bail; and
 - 24 percent were not assessed bail (most of them were sentenced).
- Just over half of those assessed bail were able to secure release from jail by posting bond while the remainder stayed in jail until the disposition of their cases.
 - Although Washington Court Rule 3.2 allows for use of unsecured bonds, which does not require defendants to deposit any money upon release but holds them liable for the full amount if they FTA, Whatcom County courts do not use these bonds.
 - Bond reduction arguments may only be made by formal motion and are heard by a judge just one day a week, which lengthens the time a defendant spends in jail prior to disposition.
- Courts in Whatcom County do not use a validated pretrial risk assessment instrument and currently have little way of assessing the risk presented by people held in jail pretrial for FTA or for public safety. Moreover, pretrial services are not available to defendants in the Superior Court, and the other courts release very few defendants to monitoring or supervision by District Court Probation. The lack of a fully staffed and scaled pretrial release program limits the ability of the courts to release people to the supervision necessary, if any, to maximize their pretrial success, and to focus scarce resources, such as electronic monitoring and other intensive supervision requirements, on higher-risk populations.
- Nearly two-thirds of jail admissions had gross misdemeanors, misdemeanors, or criminal traffic offenses as the most serious charge, and an estimated 14 to 23

percent had lower-level felonies.³ While charges are not synonymous with public safety risk or flight risk, they may be a place for the county to start.

- Overall, 34 percent of people admitted to jail with gross misdemeanor, misdemeanor, or criminal traffic charges as their most serious and assessed bond were not able to post bond to gain their release prior to disposition. In contrast, 48 percent of those with A or B felonies and assessed bond were able to post a bond to secure their release from jail.
- Even low amounts of financial bail can prevent the release of people with lower-level charges. Thirty-four percent of people admitted to jail and assigned bond were assessed bond amounts less than \$1,000 (see Figure 6)—20 percent of these had gross misdemeanors as the most serious charge; 10 percent had misdemeanors; and 57 percent had criminal traffic charges.⁴ Of people assigned bond amounts of \$1000 or less:
 - 36 percent were ultimately released on PR after staying an average of one day;
 - 44 percent bonded out after staying an average of two days; and
 - 20 percent were not released prior to resolution of their cases—or their release to another authority—and stayed an average of 12 days.
 - They occupied 13 beds in jail on any given day.

Figure 6: Jail admissions that were assessed bail by bail amount

Bail ranges	Bookings	%
Less than \$500	318	9%
\$501 - \$1,000	877	25%
\$1,001 - \$2,500	764	22%
\$2,501 - \$5,000	603	17%
\$5,001 - \$10,000	405	11%
\$10,001 - \$25,000	326	9%
\$25,001 - \$100,000	197	6%
Greater than \$100,000	59	2%

- While just one percent of people who were detained on bond and not released pretrial ultimately had their cases dismissed, they stayed an average of 33 days in jail, which accounts for approximately four jail beds on any given day.

³ We define ‘lower-level felonies’ as C-level felonies, which accounted for 14 percent of admissions. A significant portion of felonies were not classified in the jail data, but many appear to be C-level. If unclassified felonies are included in ‘lower-level felonies,’ the total percentage of admissions with lower-level felonies as the most serious charge would be 23 percent.

⁴ Excludes admissions with holds from other jurisdictions.

- As stated above, a significant number of jail admissions involve outstanding warrants. Overall, 58 percent of all admissions (including holds) had warrants; however, the type of warrant is not captured in the data. Further investigation is therefore necessary to determine what is driving the high rate of warrants. One possible contributor is that only some defendants in District and Bellingham Municipal Courts receive court date reminders. Lack of court date notification systems can increase FTA and the issuance of warrants, which increase admissions, particularly for low level charges.

Case Processing

- In 2016, 9,070 cases were disposed in Bellingham Municipal Court; 18,298 were disposed in District Court; and 909 in Superior Court.
- When defendants have multiple cases pending simultaneously, there can be significant case processing delays.
 - Defendants often have multiple cases within the same court—15 percent of defendants in Bellingham Municipal Court; 10 percent in District Court, and 16 percent in Superior Court.
 - Among 5,079 bookings, 1,444 (28 percent) had more than one case pending simultaneously, and for this group, 790 (more than half) had their cases spread across 2 or more courts.
 - There were 1,305 people admitted to jail with cases only in the Superior Court, and they had an ALOS of 169 days and took up 96 beds in the ADP. While there were fewer who had cases in Superior and another court (768), their ALOS was 409 days, and they took up 131 of ADP.
- Delays in discovery also delay case processing and defense counsel’s ability to conduct client meetings, though Task Force members have noted improvements.
- Continuances keep cases pending for too long as well, lengthening custodial stays for defendants and crowding dockets.⁵
 - In Bellingham Municipal Court:
 - Each case had 3.7 hearings, on average.
 - On average, there are 92 days between hearings.
 - 30 percent of calendared hearings were not held.
 - In District Court:
 - Each case had 4.7 hearings, on average.
 - On average, there are 97 days between hearings.
 - 29 percent of calendared hearings were not held.

⁵ While court data were limited regarding hearings—only 61 percent of cases in Bellingham Municipal, 51 percent of cases in District, and 99 percent of cases in Superior had available data—analysis was possible for a smaller sample of cases disposed in 2016.

- In Superior Court:
 - Each case had 8.8 hearings, on average.
 - On average, there are 59 days between hearings.
 - Seven percent of calendared hearings were not held.
- In the small cities, arraignments occur just once a week or in some cases, every two weeks. Generally, these courts hold hearings less frequently than the other courts.

Disposition and Sentencing

- Tension between the incentives of Fast Track and Drug Court prevents greater use of these options. Offers for these programs are not timely, and about half of Fast Track offers lapse or are rejected.
- Whatcom County lacks pre- and post-charge diversion programming tailored to the level of risk that defendants present.
- The small cities have even fewer diversion and alternative to incarceration opportunities. The option of converting fines and fees to community service hours is not available in all Municipal Courts.
- The application process and fee for Jail Alternatives bar defendants who would otherwise be eligible to participate.

Data-driven decision-making and system oversight

- The local justice system in Whatcom County is not data driven—agencies do not separately or collaboratively review, analyze, or track key performance metrics for the system and do not make decisions based on that data.
- Whatcom County lacks an effective mechanism for coordinated and collaborative oversight of the local justice system. While the official charge of the Task Force is limited and discrete in nature, the cross-agency cooperation it demonstrates provides a model for a more expanded and established collaborative body, such as a Law and Justice Council. Ideally, this body would be facilitated by a coordinator who is viewed as neutral and unbiased and has deep cross-systems expertise.

Conclusion

Through interagency collaboration and coordination, Whatcom County must address the systemic drivers of jail population growth. This is the only effective means of controlling jail growth. Any attempt to ease overcrowding by building a new facility or expanding the current one will not address the underlying causes of population growth, and the new facility will quickly become overcrowded. Criminal justice and community stakeholders must work together to achieve a safe, sustainable, and fair justice system.

LEGAL AND JUSTICE SYSTEMS SUBCOMMITTEE
Incarceration Prevention and Reduction Task Force

Working List of Areas Identified for Possible Improvements to Drug Court Program

Stephen Gockley, Subcommittee Chair
July 11, 2017

Adopt validated criteria for determining program participants

Support County funding for nationally-recognized training for entire DC team

Support County funding for additional staff (minimum .5 FTE) to better utilize expertise and time of DC administrator

Support County funding for incremental, positive recognition incentives for drug court participants

Identify and implement practices to qualify drug court program for federal funding

Negotiate with NSBHO for certification of drug court program to perform treatment evaluations

Negotiate with NSBHO for Medicaid contract with drug court program as treatment provider

Promote community-wide efforts to increase and improve treatment-supportive housing